by cars in which porters work, from liability for injuries. Plaintiff in Robinson *v.* Baltimore & O. R. Co., 35 Supreme Court Reporter, 492, in an action for injuries sustained while employed as porter on one of defendant's trains, claimed that his release was void under the above act. Mr. Justice Hughes, delivering the opinion of the court, states: "The substantial question is whether the contract of release was invalid under section 5 of the Employers' Liability Act. The application of this provision depends upon the plaintiff's employment. For the 'liability created' by the act is a liability to the 'employees' of the carrier, and not to others; and the plaintiff was not entitled to the benefit of the provision unless he was 'employed' by the railroad company within the meaning of the act. The service provided by the Pullman Company was, it is true, subject to the exigencies of railroad transportation, and the railroad company had the control essential to the performance of its functions as a common carrier. To this end the employees of the Pullman Company were bound by the rules and regulations of the railroad company. This authority of the latter was commensurate with its duty, and existed only that it might perform its paramount obligation. With this limitation, the Pullman Company supplied its own facilities, and for this purpose organized and controlled its own service, including the service of porters; it selected its servants, defined their duties, fixed and paid their wages, directed and supervised the performance of their tasks, and placed and removed them at its pleasure. We are of opinion that Congress used the words 'employee' and 'employed' in the statute in their natural sense, and intended to describe the conventional relation of employer and employee. It was well known that there were on interstate trains persons engaged in various services for other masters. Congress, familiar with this situation, did not use any appropriate expression which could be taken to indicate a purpose to include such persons among those to whom the railroad company was to be liable under the act."

Criminal Law—Continuance—Absence of Witnesses—Review of Discretionary Power.—Since the granting or refusal of a continuance is a matter largely in the discretion of the lower court, especially in a federal court, it is refreshing to find a case wherein a circuit court of appeals shows its willingness to review this discretionary power of the trial court. In Younge *v.* United States, 223 Fed. 941, we find Judge Waddell holding that "while not unmindful of the necessarily large discretion vested in trial courts in granting or refusing continuances, we are convinced, that in this case, under its peculiar circumstances, prejudiced error was committed against the accused in ruling him into trial." The facts are as follows:—Defendant, residing in the Southern district of West Virginia, was indicted at Clarksburg in the Northern district on October 9th. On October 28th, he appeared before a commissioner of the Southern

district and gave bond for his appearance in the Northern district on the first day of the next regular term; the recognizance not naming the place at which the court was to be held. On November 5th, without his knowledge or consent, the case was transferred to Philippi, where it was docketed on November 11th, and called for trial the following day. On the day the case was docketed he secured process for witnesses, and when the case was called for trial moved for a continuance because of their absence. Such witnesses were in different states and traveling from one place to another, and their testimony was material. Held, that the refusal of a continuance, because due diligence to procure the attendance of the witnesses had not been used, was erroneous.

Presumption of Payment from Lapse of Time—Application of Doctrine to United States.—In Chesapeake and Delaware Canal Co. *v.* United States, 223 Fed. 926, it is held that the doctrine of presumption of payment from lapse of time applies as well to an action by the United States to recover a debt as to one by a private individual. The distinction is drawn between statutes of limitations, and presumptions arising from lapse of time, and through this distinction is the sovereign not barred when the right turns upon a statute of limitations, but is bound when it is confronted with the presumption arising from lapse of time. To quote from the opinion of Judge Mr. Pherson: "Statutes of limitation presuppose an established substantive right, but forbid the plaintiff from enforcing it by the customary remedies. The statute is a weapon of defense, and ordinarily must be pleaded and relied on by the defendant, while the presumption or inference of payment arising from the lapse of time—generally from the lapse of 20 years—is usually drawn from the plaintiff's own case, and when so drawn it can hardly be regarded as a matter of affirmative defense. If the plaintiff cannot make out a prima facie case without showing also the fact of nonpayment for more than 20 years, the presumption of payment immediately arises, attaches at once to his evidence, and weakens it to such an extent that he cannot recover unless he goes further and undertakes to prove facts tending to repel the presumption. The defendant is not required to repeat the proof that 20 years have elapsed without payment, for that has already appeared; he need only call the court's attention thereto, and may then rest upon the presumption or inference of fact arising therefrom until the plaintiff has strengthened the weak point in his own attack. If, however, the plaintiff makes no effort so to do, he fails altogether, but he fails solely for the reason that he has not made out his case—in other words, because his evidence lacks persuasive power. But the presumption is disputable, not conclusive. To a plea of the statute of limitations, the plaintiff cannot successfully reply that the debt is still unpaid. The defendant may admit nonpayment without impairing the effect of the plea in the